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1965

IN THE

Supreme Court of the United States

No. [redacted] 117

SNYDER VOGEL AND SAM VOGEL, *Petitioners,*

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and TENNECO OIL COMPANY, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

CARL L. SHIPLEY
1366 National Press Building
Washington, D. C. 2004
Attorney for Petitioners

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1366 National Press Building
Washington, D. C. 20004

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Carl L. Shipley, on behalf of Snyder Vogel and Sam Vogel, prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of Oklahoma in the above entitled case.

OPINION BELOW

The opinion of the Supreme Court of the State of Oklahoma is No. 40525, dated February 9, 1965, and is set out *infra* in the appendix hereto, at page 1(a).

JURISDICTION

Jurisdiction of the Supreme Court of the United States is invoked pursuant to Title 28, U.S. Code, Section 2101 and Rule 19, of this Court.

QUESTIONS PRESENTED

1. Whether participation in a case by a justice of a state Supreme Court—who writes the opinion in the case and is then subsequently suspended and impeached by the Legislature and indicted by a grand jury on charges of bribery—so taints and poisons the well-spring of justice that it is a deprivation of due process of law and a denial of equal protection of the laws as guaranteed by Amendment XIV of the Federal Constitution?

2. Whether there is a deprivation of due process of law and a denial of equal protection of the laws in a Corporation Commission case where a party has asserted violation of rights under Amendment XIV to the Constitution of the United States and similar provisions of the Constitution of Oklahoma, and where the Constitution of Oklahoma provides in terms:

> "The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts.
>
> In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine * * * whether the findings and conclusions of the Commission are sustained by the law and substantial evidence."

But where the Supreme Court of Oklahoma nonetheless rules and decides that he,

> "controversy hinges upon the single question of whether there was substantial evidence to support the order entered",

thus ignoring the constitutional issues and applying the "substantial evidence" rule to a case where the plaintiff in error is entitled to an independent judgment on the facts under the cited provision of the Oklahoma Constitution?

3. Whether the establishment by the Oklahoma Corporation Commission of a 320-acre drilling and spacing unit for the production of gas and gas condensate from each of two common sources of supply in Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma is such an unreasonable, arbitrary, and discriminatory restriction on the use of private property as to be a deprivation of due process of law and a denial of equal protection of the laws, as guaranteed by Amendment XIV to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pertinent provisions of the Constitution of the United States are as follows:

> Amendment XIV, Section 1: "* * * Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article II of the Constitution of the State of Oklahoma reads in pertinent part:

> § 23. *Private property—Taking or damaging for private use.*—No private property shall be taken or damaged for private use, with or without

compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

§ 24. *Private property—Public use—Character of use a judicial question.*—Private property shall not be taken or damaged for public use without just compensation. Such compensation, irrespective of any benefit from any improvements proposed, shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected from the regular jury list of names prepared and made as the Legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. * * * When possession is taken of property condemned for any public use, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question.

Article IX, Section 20 of the Constitution of the State of Oklahoma reads in pertinent part:

"The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial

only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment *as to both the law and the facts.*

In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall *not* extend further than to determine whether the Commission has regularly pursued its authority and entered findings and conclusions of the Commission which are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment either affirming or reversing the order of the Commission appealed from." (Emphasis supplied)

Pertinent provisions of the statutes of the State of Oklahoma relating to power and authority of the Corporation Commission to establish well spacing and drilling units are:

Sec. 87.1(a), Title 52, O.S.A.:

"To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma . . ."

Sec. 87.1(b), Title 52, O.S.A.:

"In establishing a well spacing or drilling unit for a common source of supply thereunder, the

acreage to be embraced within each unit and the shape thereof shall be determined by the Commission from evidence introduced at the hearing, ...

"The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area; which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information . . ."

Sec. 86.3, Title 52, O.S.A.:

"The term 'waste', as applied to gas, in addition to its ordinary meaning, shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply, the inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply . . ."

STATEMENT OF FACTS

Petitioners herein, Snyder Vogel and Sam Vogel, and their immediate family, own 50 acres of the minerals in SE/4 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, under lease to Tenneco Oil Company; in addition Snyder Vogel and Sam Vogel own 8 acres in the SW/4 of said section 35.

The Tenneco Oil Company drilled its Sarkeys No. 1 Well in the SE/4 of the said Section 35 (R., Ex. 9A), which encountered two separate common sources of supply of gas and gas condensate, the first being the Basal McLish Sand at the approximate depth of 8,038 feet below the surface, said sand being about 20 feet in thickness (R. 33), and a second and separate reservoir in the Oil Creek Sand at the approximate depth of 8,231 feet, this second sand being approximately 60 feet in thickness (R. 32, 33).

The said Tenneco Oil Company Sarkeys No. 1 Well, described above, is more specifically located in the NW/4 of the SE/4 of the SE/4 of said Section 35, a distance of 990 feet west of the east line and 1650 feet east of the west line of the SE/4 of Section 35.

After drilling and completing the Sarkeys No. 1 Well, Tenneco Oil Company filed an application with the Oklahoma Corporation Commission requesting that all of the S/2 (320 acres) of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, be declared a drilling and spacing unit for each of the two above referred to common sources of supply.

Petitioners herein participated in the hearing on said application before the Oklahoma Corporation Commission and protested the granting of the application and the establishment of the drilling and spacing

unit for each of the two common sources of supply on the ground that the 160 acres in the SW/4 of said Section 35 will not produce gas and gas condensate in the two reservoirs, and the 320 acre spacing and drilling unit would be a dilution of the income that petitioners are entitled to receive from the production from this well.

If the drilling and spacing unit established by the Oklahoma Corporation Commission had been confined to the 160 acres of the SE/4 of the said Section 35, the mineral ownership of the petitioners would amount to 50/160th. The establishment by the Commission of a 320 acre unit materially destroys the correlative rights and property rights of petitioners in that it reduces their mineral ownership to 58/320ths, or 29/160th, of the total 1/8th production, a reduction in their correlative rights of approximately 40%, which can amount to a substantial sum of money in view of the productive history of income from the McLish and Oil Creek formations in the State of Oklahoma. Petitioners expressly challenged the order of the Oklahoma Corporation Commission in their petition in error to the Supreme Court of Oklahoma on the ground that said order denied them the rights guaranteed by Amendment XIV to the Constitution of the United States, and that said order constituted a taking of their property in violation of the provisions of Sections 23 and 24 of Article II of the Constitution of the State of Oklahoma.

As indicated in the opinion of the Supreme Court of Oklahoma included in this petition in the appendix at page 1(a), the Court recognized that the petitioners had presented two propositions for judicial review of the order of the Oklahoma Corporation Commission, to

wit: first, alleged violation of their rights under both the Constitution of the United States and the Constitution of Oklahoma, and as a second proposition, the lack of substantial evidence to support the spacing and drilling order entered by the Oklahoma Corporation Commission. As indicated in said opinion, the Supreme Court of Oklahoma erroneously and arbitrarily and in deprivation of the rights guaranteed to petitioners by Amendment XIV to the Constitution of the United States and the cited provisions of the Constitution of the State of Oklahoma wholly ignored and avoided constitutional questions raised by petitioners, as follows:

> "The claimed violation of the appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two, supra, namely, that the evidence is insufficient to justify the order entered. * * * This controversy hinges upon the single question of whether there was substantial evidence to support the order entered." (Appendix 1(a))

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF WRIT

Petitioners respectfully submit and verily believe that the facts and matters of record in their case call inexorably for this Court to grant review and assume jurisdiction on writ of certiorari, in the exercise of its sound judicial discretion, since the circumstances of petitioners' case fit into the considerations governing review on certiorari as set forth in Rule 19 of this Court's rules, which provide in pertinent part:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither

controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court * * *".

The special and important reasons justifying review on writ of certiorari are as follows:

1. The opinion of the Supreme Court of the State of Oklahoma in *Vogel et al.* v. *Corporation Commission et al.*, No. 40526, decided February 9, 1965, and which petitioners herein request be reviewed on writ of certiorari, was written by Justice N. B. Johnson of that court, who has since been indicted by an Oklahoma County Grand Jury for bribery on March 27, 1965, and suspended from his office and impeached by the Oklahoma State Legislature. Although Justices Halley, Jackson, Williams, Irwin and Berry concurred in the opinion, and Justice Blackbird dissented, petitioners respectfully submit and verily believe that the participation by Justice Johnson in said opinion so tainted and poisoned the well-spring of judicial impartiality as to be a denial of the equal protection of the laws and a deprivation of the due process of law guaranteed to petitioners by Amendment XIV to the Constitution of the United States. The articles of impeachment against Justice Johnson adopted by the House of the Oklahoma Legislature on March 24, 1965 and accepted by the Senate on March 29, 1965, charge him with accepting a $7,500 bribe in *Selected Investment Corp.* v. *Oklahoma Tax Commissioner*, and a $2,500 bribe in *Oklahoma Co.* v. *O'Neill* to influence his opinion. Just as a

party in a civil jury proceeding is entitled to a jury instruction that all the testimony of a witness who lies on one material matter may be disregarded, so petitioners believe an analogous principle should vitiate this opinion of Justice Johnson. Certainly the expanding concept of due process includes the right of petitioners to have their cause decided by the Supreme Court of Oklahoma by justices, each of whom is free from suspicion and from subconscious fear of reprisal or hope of favor, with minds and consciences open and disposed to be persuaded by the law and the facts of record presented for decision. Due process is more than "that inocuous generality" referred to by Justice Holmes in *Atkins* v. *Children's Hospital*, 261 U.S. 525 (1923). If a grand jury impaneled pursuant to the laws of the State of Oklahoma had probable cause to believe that the allegations of bribery and other illegal conduct made against Justice Johnson were supported by sufficient evidence to justify an indictment, and the Legislature of Oklahoma saw fit to suspend him from office on March 29, 1965, and institute impeachment proceedings against Justice Johnson, this court has no fair alternative under the 14th Amendment to granting a writ of certiorari herein to consider the relationship between the due process clause and the assumption that the judicial process in the various states must be free from any taint of corruption, bias, or impropriety. This court has previously determined that inasmuch as due process implies a tribunal both impartial and mentally competent to afford a hearing, it follows that the subjection of a defendant's liberty or property to the decision of a court, the judge of which has a direct, personal, substantial pecuniary interest in rendering a verdict against him, is violative of the 14th Amendment. *Tumey* v. *Ohio*, 273 U.S. 510 (1927); *Jordan* v.

Massachusetts, 225 U.S 167, 176 (1912). In like manner, this court has held that the attribute of impartiality is lacking whenever a court is dominated by a mob. *Frank* v. *Mangum*, 237 U.S. 309, 335 (1915). Due process "requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice, which lie at the base of our civil and political institutions." *Buchalter* v. *New York*, 319 U.S. 427, 429 (1943). In the context of criminal proceedings, this Court has said

> "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. * * * What is fair in one set of circumstances may be an act of tyranny in others." *Snyder* v. *Massachusetts*, 291 U.S. 97, 116, 117 (1934).

Due process should contemplate a state judiciary not only free from corruption and partiality in fact, but free from the appearance of corruption and partiality. So far as counsel for petitioners can ascertain, this aspect of due process is a federal question of substance not heretofore determined by this Court. In such cases as *WKAT* v. *Federal Communications Commission*, 258 F. 2d 418; *WKAT, Inc.* v. *FCC*, 200 F. 2d 375; *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514, 541; *Massachusetts Bay Telecasters* v. *FCC*, 261 F. 2d 551; *Hazel-Atlas Co.* v. *Hartford Co.*, 300 U.S. 238, it has been determined that ex parte attempts to influence members of Federal administrative agencies so vitiate the proceedings as to require a new hearing.

> "Surreptious efforts to influence an official charged with the duty of deciding contested issues upon an open record in accord with basic principles of our jurisprudence, eat at the very heart of our

system of government—due process, fair play, open proceedings, unbiased, uninfluenced decision." *WKAT, Inc.* v. *FCC, supra.*

By analogy, the above decisions strongly suggest that this Court should in the exercise of its sound judicial discretion review the decision of the Supreme Court of Oklahoma on writ of certiorari, and send it back for re-decision without the participation of Justice Johnson. If he accepted bribes to influence decisions in other cases, how do plaintiffs know he did not to their prejudice exercise a prejudicial influence in their case?

2. Although this Court has ruled that the due process clause of the 14th Amendment does not control the mere forms of procedure in State courts or regulate practice therein, *Holmes* v. *Conway,* 241 U.S. 624, 631 (1916); *Louisville & M.R. Co.* v. *Schmidt,* 177 U.S. 230, 236 (1900), this Court has recognized that a state is only free to regulate the procedure of its Courts in accordance with its own conception of policy and fairness so long as it does not offend "some principle of justice so rooted in the conscience of our people as to be ranked as fundamental." *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (1934); *Weste* v. *Louisiana,* 194 U.S. 258, 263 (1904); *Chicago B. & Q. R. Co.* v. *Chicago,* 166 U.S. 226 (1897); *Jordan* v. *Massachusetts,* 225 U.S. 167, 176 (1912). See also *Angel* v. *Bullington,* 330 U.S. 183 (1947). It is implicit in the due process clause of the 14th Amendment that a state Supreme Court is bound to follow the provisions of its own state Constitution, and that those provisions must be consistent with the provisions of the federal constitution, just as federal administrative agencies are bound to follow the rules and regulations they impose upon themselves. *Service* v. *Dulles,* 354 U.S. 363.

Article IX, Section 20 of the Constitution of Oklahoma reads in pertinent part:

> "The Supreme Court's review of appealable orders of the Corporation Commission *shall* be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court *shall* exercise its own independent judgment *as to both the law and the facts.* (Emphasis added)
>
> In all other appeals from orders of the Corporation Commission, the review of the Supreme Court shall *not* extend further than to determine whether the Commission has regularly pursued its authority and whether entered the findings and conclusions of the Commission are sustained by the law and *substantial evidence.*" (Emphasis added)

Petitioners herein timely raised federal and state constitutional questions in their petition in error filed with the Supreme Court of Oklahoma, and expressly challenged the Corporation Commission's order on the ground that it denied to them the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States, and that the order entered by the Corporation Commission constituted a taking of their property in violation of Sections 23 and 24 of Article II of the Constitution of the State of Oklahoma. It is as clear as anything can be from a reading of plain language that under the Constitution of the State of Oklahoma the "substantial evidence" rule *only* applies in non-constitutional appeals from Corporation Commission orders. In accordance with the constitutional principle of due process, petitioners were entitled to have the Supreme Court of Oklahoma

follow the Oklahoma Constitution's mandatory language to the effect that the Oklahoma Supreme Court,

> "*shall* exercise its own independent *judgment* as to *both the law and the facts*"

in petitioner's case. That the Supreme Court of Oklahoma failed and refused to do so is plain on the face of its opinion cited in the appendix hereto at page 1(a), which states in pertinent part:

> "The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States because there is insufficient evidence 'in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case'. * * * The claimed violation of the appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two, supra, namely, that the evidence is insufficient to justify the order entered. * * * This controversy hinges upon the single question of whether there was substantial evidence to support the order entered."

Petitioners respectfully submit that application of the "substantial evidence" rule to this case is *not* an independent judgment by the Supreme Court of Oklahoma "as to both the law and the facts" of the case. The two paragraphs of the Oklahoma Constitution cited hereinabove clearly contemplate a distinction between the type of review given constitutional and non-constitutional cases. And a state court may not avoid deciding federal questions and thus defeat jurisdiction of this Court by putting forward non-federal grounds for

decision. *Wolfe* v. *State of North Carolina*, 364 U.S. 177. Previous decisions of the Supreme Court of Oklahoma on this point are couched in a negation in terms, which in effect nullify the plain meaning of the Oklahoma Constitution. For example, in *Mee* v. *Corporation Commission* (Okla. 1956), 293 P. 2d 593, the Oklahoma Court said:

> "The rule is well established that if an Order of the Corporation Commission appealed from is found to be supported by substantial evidence, it will be affirmed by this Court."

In *Woody* v. *State Corporation Commission*, (Okla.) 265 P. 2d, 1102, 1106, the Supreme Court of Oklahoma stated:

> "That * * * in the orderly administration of law we must indulge the presumption that the Commission's order is just, reasonable and correct * * *".

In *Anderson-Pritchard Oil Corporation* v. *Corporation Commission*, 205 Okla. 672, 241 P. 2d 363, the second syllabus by the Court reads:

> "Upon an appeal from an Order of the Corporation Commission asserting a violation of the rights of parties under the State of Federal Constitution, this Court will exercise its own independent judgment as to both the law and the facts, as provided by Section 20, Article IX of the Oklahoma Constitution, and will examine the entire record to determine whether the order is lawful and supported by competent and substantial evidence, and if found to be lawful and supported by the evidence, the order will be affirmed."

In *Carter Oil Company* v. *State*, 240 P. 2d 787, the Supreme Court of Oklahoma ruled:

> "Here where the order complained of hinges on asserted constitutional rights, the Court is author-

> ized to exercise its own independent judgment as to both the law and the facts. * * * The full consideration of the record unerringly leads to the conclusion that the order here is not supported by any substantial evidence, and is therefore contrary to law."

It is significant to note that in interpreting its own constitutional responsibilities the Supreme Court of Oklahoma substituted the phrase "authorized to exercise its own independent judgment" for the phrase "shall exercise its own independent judgment," the mandatory language contained in the Oklahoma Constitution. It is also plain from reading the cited language of the Carter Oil Company case that the Supreme Court of Oklahoma has persisted in misconstruing its responsibility to exercise its independent judgment as to the facts, as well as the law, in Corporation Commission cases involving asserted constitutional rights, and wrongly relying instead on the "substantial evidence" rule, which under the *Mee* decision referred to hereinabove simply would require the affirmation of a Corporation Commission decision, whether or not the Supreme Court agreed with its findings of fact and conclusions, if the Commission's decision is supported by substantial evidence, all based upon the Supreme Court's indulgence of the presumption that the Corporation Commission's orders are just, reasonable and correct. Just as this Court has held that the duty rests upon itself to decide for itself facts or construction upon which federal constitutional issues rest, *Kern-Limerick* v. *Scurlock,* 347 U.S. 110, so the Supreme Court of Oklahoma has a similar duty, which cannot be discharged by delegation to the Corporation Commission.

Petitioners respectfully submit and verily believe that it is a deprivation of due process of law and a

denial of the equal protection of the laws under the 14th Amendment for the Supreme Court of Oklahoma to fail and refuse to make *independent findings of fact* and conclusions of law respecting the prevention of waste of gas and protecting the correlative rights of interested parties in establishing a well-spacing and drilling unit for the two common sources of supply discovered in Tenneco Oil Company's Starkeys No. 1 Well, which encountered gas and gas condensate in both the Basal McLish Sand and Oil Creek Sand at the location NW/4 of the SE/4 of the SE/4 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, but instead accepting on the basis of "substantial evidence," the order of the Corporation Commission in creating one drilling and spacing unit of 320 acres, consisting of the entire S/2 of Section 35. An independent determination by the Supreme Court of Oklahoma on the basis of evidence of record, based on the Court's own independent findings of fact and conclusions, with respect to the establishment of a proper well-spacing and drilling unit for common sources of supply under the said acreage, to prevent waste, all as provided in Sections 87.1(a) and (b), Title 52, Oklahoma Statutes Annotated, might have resulted in an entirely different decision insofar as the property rights of petitioners are concerned.

Petitioners verily believe this is a special and important reason for granting certiorari in this cause, as the opinion of the Supreme Court of Oklahoma in *Vogel et al.* v. *Corporation Commission et al.,* No. 40526, decided February 9, 1965, was not only decided in a way probably not in accord with applicable decisions of this Court, but also ignored a Federal constitutional question of substance not heretofore determined by this Court, i.e., that the Supreme Court of

Oklahoma cannot ignore the provisions of the Constitution of Oklahoma requiring an independent decision on the law and the facts in Oklahoma Corporation Commission cases wherein parties assert federal constitutional rights.

3. Since 1886, when Chief Justice Waite, in the *Railroad Commission cases,* 116 U.S. 307, warned that

> "This power to regulate is not a power to destroy; the State cannot do that in law which amounts to a taking of property for public use without just compensation or without due process of law",

this Court has tended to treat "due process of law" and "just compensation" as equivalents. In *Chicago M. & St. Paul R. Co.* v. *Minnesota,* 134 U.S. 418, 458 (1890), this Court ruled:

> "the question of the reasonableness of a rate * * * involving as it does the element of reasonableness both regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging rates for the use of its property and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself without due process of law * * *".

(See also *Reagan* v. *Farmers Loan & Trust Co.,* 154 U.S. 362). The judicial determination of railroad rates is not substantially different in character from the judicial determination of well-drilling and spacing units. The cited portions of Article IX, Section 20 of the Constitution of Oklahoma, referred to hereinabove, seem plainly to point in this direction. Although

the *Reagan* case supra, and *Interstate Commerce Commission* v. *Illinois C. R. Company,* 215 U.S. 452, 470 (1910), make it clear the courts are not authorized to usurp merely administrative functions, there is nothing in the federal constitution or decisions of this Court which would prohibit a state in its constitution from requiring a judicial determination in constitutional cases of such administrative matters as the creation of a proper well-drilling and spacing unit as is provided under the statutes of Oklahoma.

In oil and gas cases, this Court has ruled numerous times that states have authority to pro rate production to prevent waste, to prohibit wasteful conduct in behalf of the owners of gas in a common reservoir, or because of the public interest involved. *Thompson* v. *Consolidated Gas Utilities Corporation,* 300 U.S. 55 76-77 (1937), citing *Ohio Oil Company* v. *Indiana* (No. 1) 177 U.S. 190 (1900); *Limdsley* v. *Natural Carbonic Gas Company,* 220 U.S. 61 (1911); *Oklahoma* v. *Kansas Natural Gas Company,* 221 U.S. 229 (1911). This court has determined it is neither repugnant to the due process clause nor inconsistent with the federal constitution for a state statute to define waste as including economic waste and limiting a producer to taking only such proportion of oil that may be produced from a common source without waste as the production of his well bears to the total production of the common source. *Champlin Refining Company* v. *Corporation Commission,* 286 U.S. 210 (1932). Indeed this Court has ruled that the combination of factors upon which a system of pro-ration is based is a question for administrative and not judicial judgment, especially where a decision must be based on conflicting expert testimony in the domain of oil and gas well knowledge, where judgment is necessarily beset by the neces-

sity of inferences bordering on conjecture even for those learned in the art. *Railroad Commission* v. *Oil Company,* 310 U.S. 573 (1940). See also *Railroad Commission* v. *Oil Company,* 311 U.S. 570 (1941) and *Railroad Commission* v. *Humble Oil and Refining Company,* 311 U.S. 578 (1941). However, the above cited cases did not involve a state constitutional provision requiring independent judicial findings in constitutional cases. This line of reasoning is not applicable to the case at bar, since one of the central questions is whether or not the Supreme Court of Oklahoma is required by the Oklahoma Constitution to make an independent judicial determination of the law and the facts under the applicable state statutes, regardless of what independent decision the Corporation Commission might have made or might make on the same record. But even if it be assumed that the Supreme Court of Oklahoma can meet its obligation under the Oklahoma Constitution by simply applying the "substantial evidence" rule to the independent determinations of the Oklahoma Corporation Commission, this Court can and should properly review the entire record to see whether or not the petitioners have suffered a taking of private property for private benefit in violation of their rights under the 14th Amendment of the Constitution of the United States. *Thompson* v. *Consolidated Gas Utilities Corporation,* 300 U.S. 55 (1937). If the Oklahoma Corporation Commission by establishing one 320-acre drilling and spacing unit consisting of the S/2 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, for the production of natural gas and natural gas condensate in the Basal McLish Sand at 8,038 feet below the surface and in the Oil Creek Sand at 8,231 feet below the surface, as separate reservoirs, instead of

creating a unit not in excess of 160 acres, is so restrictive of the use of petitioners' private property as to be unreasonable, there is a "taking" without due process of law. *Pennsylvania Coal Company* v. *Mahon,* 260 U.S. 393 (1922). This must depend upon a review of the evidence of record before said Commission by this Court. In a somewhat parallel situation, this Court, in upholding zoning regulations limiting the height of buildings which may be constructed in a designated zone, has warned that similar regulations, if unreasonable, arbitrary, and discriminatory, may be held to deprive an owner of the profitable use of his property and hence to amount to a taking sufficient to require compensation to be paid for such invasion of property rights. *Welch* v. *Swasey,* 214 U.S. 91 (1909).

Apart from the question of responsibility of the Supreme Court of Oklahoma, under Article IX, Section 20 of the Constitution of Oklahoma, as interpreted by itself in such cases as *Rich* v. *Doneghey,* 71 Okla. 204, 177 Pack 86; *Grison Oil Corporation* v. *Corporation Commission,* 186 Okla. 548, 99 P. 2d 134; *Gulf Oil Corporation* v. *State,* 360 P. 2d 933; *Panhandle Eastern Pipeline Co.* v. *Corporation Commission,* 285 P. 2d 847; *Shell Oil Company* v. *Davidor and Davidor,* et al., 315 P. 2d 259; and *Pannell* v. *Farmers Union Co-op Gin Association,* 192 Okla 652, 138 P. 2d 117, there is a basic constitutional question involved as to whether it's decision to the effect that there is "substantial evidence" in the record to support the order of the Oklahoma Corporation Commission establishing one 320-acre well drilling and spacing unit consisting of the south half of said Section 35 is so wholly and totally erroneous as to be arbitrary, capricious and a violation of petitioner's rights under the 14th Amendment to the Federal Constitution. Exhibit 9A in the record of pro-

ceedings before the Oklahoma Corporation Commission (R. 95) and included in this Petition as Appendix 1(b) shows a general view of development in the area involved, indicating one structure covering portions of Sections 6 and 7 in Township 1 North, Range 10 East, at the extreme south east corner of the area, where four wells have been drilled, two of which were dry holes. The two producing wells shown are in a southeast-northwest trend, and are offset by a dry hole, indicating the trend of the entire area. The squares on Exhibit 9A (Appendix 1(b) hereto) are the equal of 40 acres, and any layman can see that Exhibit 9A is almost conclusive evidence that a very narrow structural trend is involved. Section 1 immediately northwest of the two wells referred to shows the structure to be only one-half mile wide east and west. However, when one turns to the land involved in the subject controversy, it is found that the Corporation Commission extended the structure over an area *one mile wide east and west.* The only well drilled in Section 35 is only 990 feet from the east line. From the location of the well to the west side the unit created by the Commission is a distance of 4,290 feet. By referring back to the first structure indicated hereinabove in Sections 6 and 7, it is virtually conclusive that the structure does not extend east and west over 1,320 feet. (App. 1(b) hereto) Thus, it is graphically illustrated, that the order of the Oklahoma Corporation Commission spacing an area east and west a mile wide, or 5,280 feet, is wholly erroneous and not supported by substantial evidence. Exhibit 9A (R. 96) shows the location of remaining development on this trend in the next structure in this area and immediately north of the land in controversy. Exhibit 9A shows in more detail a fault running generally northwest and southeast right through the middle of the structure. That it is a

well-defined fault is ascertainable from the fact that the wells east of the middle fault encountered the Ordivician, which includes the Basal McLish and the Oil Creek Sands, on the east side of the fault in the range of a minus 4,100 feet, while wells on the west side of this fault encountered the Ordivician at a minus 3900 to 3,960 feet, or a throw of approximately 140 feet.

This evidence leaves no doubt about the separation in the area, and establishes that in fact there are two separate reservoirs located in Sections 27 and 28 of Township 2 North, Range 9 East. The east reservior in Section 27 and the structure east and west is not in excess of one-half mile, and probably does not extend that far. The west reservoir, covering the land in the east half of Section 28, and a part of the lands in the SW/4 of Section 27, is approximately one-half mile east and west. The evidence is clear that the five reservoirs in this immediate area are small, narrow structures, and never exceed more than two 40-acre locations east and west. On Exhibit 9A (App. 1(b) hereto) the evidence is clear that a line commencing in the southeast corner of the exhibit in Section 7 and projected in a straight line running northwest to the areas referred to through the various reservoirs comes extremely close to every producing well in all of the producing reservoirs, and in no case is a producing well more than 40 acres away from the axis created by said straight line, except in the west reservoir in the extreme northern portion of the exhibit. If a straight line is projected through the middle of the west reservoir in this area on the exhibit no well is in excess of 40 acres away from the axis projected by such a line. The evidence is conclusive that these reservoirs are narrow and extend generally only to an area covering two 40 acre tracts east and west, and applied to the

property in controversy herein, it can be seen that the well in the unit created by the Oklahoma Corporation Commission in the present dispute is in the east 40 acres of the unit area. It would appear to be wholly erroneous, unreasonable, and arbitrary in view of the development history of the area, for any fact-finding body to say that in the isolated instance affecting the S/2 of Section 35, that the productive area includes all of the S/2 of Section 35, and extends to and covers the SW/4 of Section 35. Exhibit 10 (R. 97) (App. 1(c) hereto) reveals that Tenneco Oil Company successfully sought to have the reviewing authority believe that all of the S/2 of Section 35 is productive in two reservoirs. The legend attached to the exhibit appears as "integrated, sub-service and seismic structure map top of Booch 3 Sand". The Supreme Court of Oklahoma completely ignored the fact that the word "Booch 3" was pencilled out, and that the words "Oil Creek" were written suspiciously in ink above it in the exhibit. Without inquiry, the Supreme Court of Oklahoma apparently accepted this "altered" Tenneco Oil Company exhibit as locating the structure position of the Oil Creek formation, when it is common knowledge of which the Court could take judicial notice that the Booch formation in this area is several thousand feet above the Oil Creek and is productive of gas, and that there is no relation whatsoever between the Pennsylvanian Booch formation and the Ordivician Oil Creek formation some 4,000 feet deeper. The testimony of the Tenneco Oil Company expert at record pages 37, 39, 40, 42 and 63-65 supports the material referred to hereinabove in Exhibits 9 and 9A (R. 95 and 96). To the extent that the expert witness of the Tenneco Oil Company differed from the position of petitioners' exhibits and witness (R. 54-56) and (R. 46-51), he based his opinion on information contained in seismic re-

ports which he refused to produce (Record 37) (See also Exhibit 10, R. 97). Thus, the Oklahoma Corporation Commission's decision on the record involves ignoring the expert testimony of two experienced oil geologists familiar with the area for 30 years, both of whom produced exhibits and testified that the SW/4 of Section 35 is not underlain by production from the two separate reservoirs in the unit established by the Oklahoma Corporation Commission, and blind acceptance of the one witness of the Tenneco Oil Company who was new in the area and who based his opinion on seismic information which he refused to produce, and which was not subject to cross-examination, and on an Exhibit that on its face had been altered by someone unknown for a purpose unknown and was confusing as to what it purported to show. (Appendix (c) hereto) (R. 37, 58)

Petitioners respectfully submit that on the basis of the whole record neither the Oklahoma Corporation Commission nor the Supreme Court of Oklahoma itself could possibly have determined that there was substantial evidence to support the establishment of one 320 acre well-spacing and drilling unit consisting of the S/2 of Section 35 as outlined hereinabove. Such finding on the basis of the evidence of record was so unreasonable, arbitrary and capricious as to amount to a deprivation of petitioners' property without due process of law, and a denial of equal protection of the law, as guaranteed to them by the 14th Amendment to the Constitution of the United States. Petitioners respectfully submit and verily believe that the Supreme Court of Oklahoma in holding that there was "substantial evidence" to support the Oklahoma Corporation Commission's order in said proceeding was in effect a decision on a Federal question in a way prob-

ably not in accord with applicable decisions of this Court under the due process clause of the 14th Amendment.

WHEREFORE, the premises considered, petitioners respectfully submit that they have set forth hereinabove special and important reasons for the exercise of sound judicial discretion by this Court in reviewing the opinion and decision of the Supreme Court of Oklahoma herein on writ of certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted. There is no avenue of relief from the tainted and erroneous decision of the Supreme Court of Oklahoma violating constitutional rights of petitioners herein except this Court.

CARL L. SHIPLEY
Attorney for Petitioners
1366 National Press Building
Washington, D. C. 20004

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1366 National Press Building
Washington, D. C. 20004

APPENDIX

APPENDIX

VOGEL ET AL.

v.

CORPORATION COMMISSION ET AL.

No. 40526. Feb. 9, 1965.

* * * * * * * * * * *

JOHNSON, J. This is an appeal from an order of the Corporation Commission, creating one drilling and spacing unit consisting of the S-½ of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma. Such unit was created for the production of natural gas and condensate from the Basal MsLish and Oil Creek Sands.

The plaintiffs in error submit two propositions for the vacation of the order as follows:

"Plaintiffs in error challenge the order of the Corporation Commission as being a violation of their Constitutional rights.

"There is no substantial evidence in the record authorizing the entry of the spacing order."

In Finding No. 5 the Commission made this statement, which summarizes the controversy:

"5. The principal dispute in this cause is whether or not the SW/4 of said Section 35 is underlain by productive Basal McLish and Oil Creek Sands; * * * "

After making a resume of the testimony, the Commission made Finding No. 8 which is as follows:

"8. Taking into consideration all of the evidence, facts and circumstances in this cause, it would appear that some substantial portion of the SW/4 is underlain by these common sources of supply, and therefore an order should be made establishing the S/2 of Section 35 as a drilling and spacing unit for the Basal McLish Sand and for the Oil

Creek Sand, and the Sarkeys No. 1 Well, located in the NW/4 of the SE/4 of the SE/4 of Section 35, should be the permitted well for said unit."

It is this finding to which objection is made.

The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States because there is insufficient evidence "in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case." This quoted language is from the brief of appellants. The claimed violation of appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two, supra, namely, that the evidence is insufficient to justify the order entered.

We therefore proceed to a consideration of Proposition Two. The entire objection to the order is that there is insufficient evidence to justify the inclusion of the SW/4 of Section 35, and therefore the royalties of the plaintiffs in error would be reduced by approximately forty percent.

It is conceded by both parties that the rule is correctly stated in the case of Mee v. Corporation Commission, Okla., 293 P. 2d 593, from which the following is quoted:

"The rule is well established that if an order of the Corporation Commission appealed from is found to be supported by substantial evidence, it will be affirmed by this Court. The rule is clearly stated in Woody v. State Corporation Commission, Okla., 265 P. 2d 1102, 1106, wherein it is stated in the body of the opinion:

"' • • • • In the orderly administration of law we must indulge the presumption that the Commission's order is just, reasonable and correct.

" • • • •

" 'Our appellate jurisdiction, as applied to the case before us, is judicial only, and is limited to a consideration whether the Commission has legally pursued its authority, and whether its findings and conclusions are sustained by the law and substantial evidence. * * * ' "

This controversy hinges upon the single question of whether there was substantial evidence to support the order entered. The plaintiffs in error contend that there is no substantial evidence to show that there was a probability of production under the SW/4 of Section 35. The precise contention is that the opinions of the Tenneco experts were based wholly upon seismic information which it is said was "questionable," "not substantial" and "not persuasive."

We do not deem it necessary to determine that seismic data of the character introduced is insufficient to sustain the order entered or does not constitute "substantial" evidence within the definition established by our previous opinions. In this case there was *other* evidence.

We quote excerpts from the testimony of the geologist testifying for applicants. After stating that since production could, in his opinion, be had in the SW/4 of Section 35, he pinpointed the sources from which his opinion was formed, as follows:

"Q. What evidence do you have that any part of the Southwest Quarter of Section 35 will be productive? A. It's based on seismic data in the area.

"Q. Is it based entirely on seismic information? A. We also have a knowledge of the producing trend that runs through this area. We are generally looking at a ridge running through the area and we feel that this ridge continues on slightly north of west from the Sarkeys Well in this same section.

" * * *

"Q. (By Mr. Walker) With respect to Exhibit 10, let me ask you what the information is comprised of? I don't even know myself. A. We have the well records of the wells we drilled; we have the logs and the scout tickets of the wells immediately northwest of this area; we also had the seismic records in this area.

"• • • •

"Q. On the Sarkeys Well you have a minus 7489. What is that? A. That's the top of the Oil Creek.

"Q. How did you arrive at the gas-water contact? A. That is based on information on the electric log.

"• • • •

"Q. Does Exhibit 10 bear out that interpretation of the area? A. Yes, sir.

"Q. And based on that, the Southeast Quarter of Section 35 would be wholly underlain by each common source of supply involved which would contribute gas to the well involved? A. It wouldn't be wholly underlain but substantially, yes, sir.

"• • • •"

We have been cited to no authority which holds that seismic data is not sufficient upon which to base an opinion as to the productivity of an area. But if additional information is required, we are of the opinion and hold that the quoted testimony shows additional information upon which the opinion was based.

The quoted evidence is sufficient to come within the rule set forth in Superior Oil Co. v. Oklahoma Corporation Commission, 206 Okl. 213, 242 P. 2d 454, wherein we said in the body of the opinion:

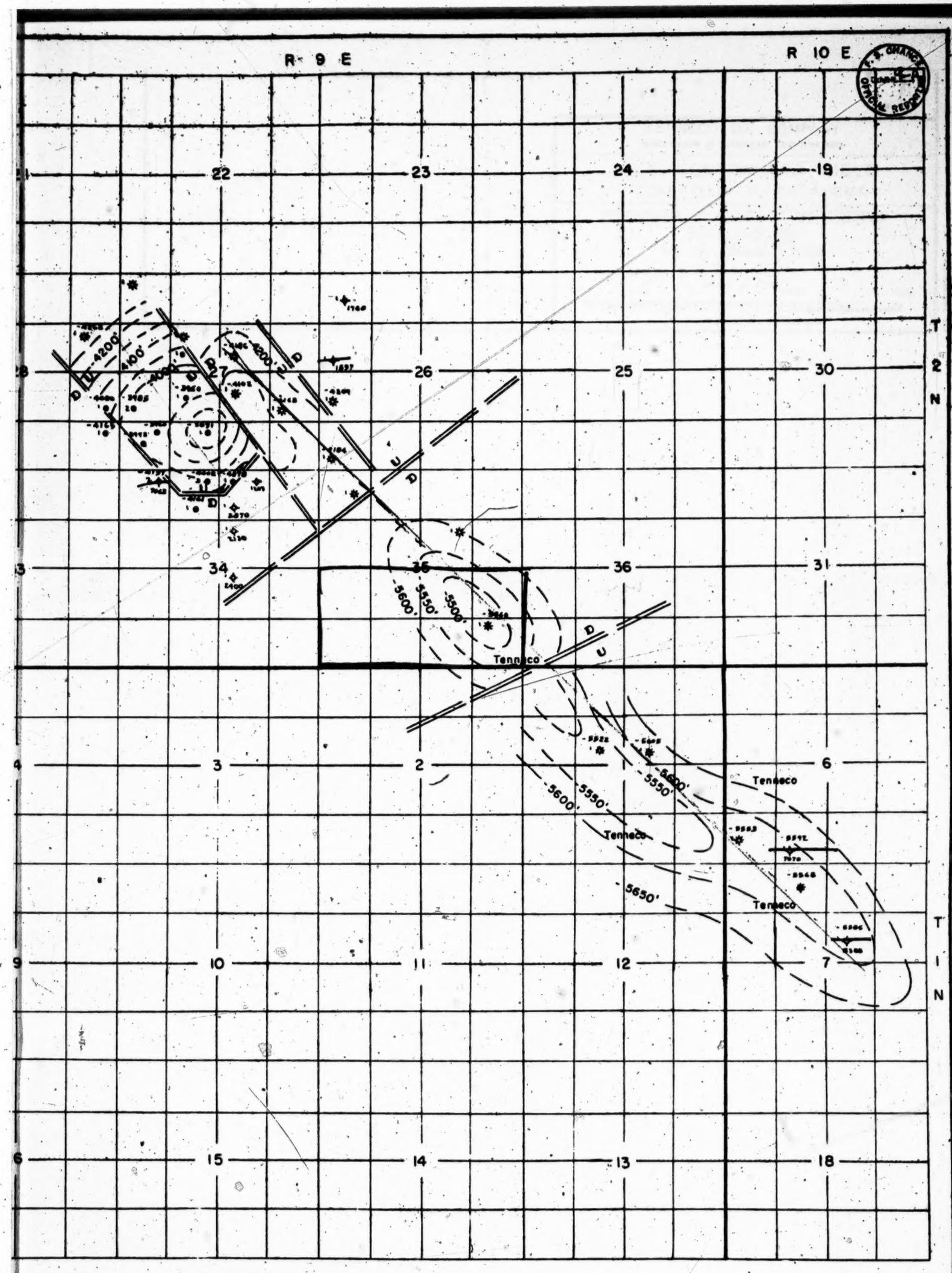
"We concede that the Corporation Commission has a wide discretion in the performance of its statutory duties. We cannot substitute our judgment on disputed questions

of facts unless the findings of the commission are not as commanded by the Constitution, supported by the law, and substantial evidence."

See, also, Pannell v. Farmers Union Cooperative Gin Association of Sterling, 192 Okl. 652, 138 P. 2d 817, Chicago R. I. & P. Ry. Co. v. Vogel, 195 Okl. 194, 156 P. 2d 620; Yellow Transit Co. v. State, 198 Okl. 229, 178 P. 2d 83; Cities Service Oil Co. v. Anglin, 204 Okl. 171, 228 P. 2d 191; Anderson-Prichard Oil Corp. v. Corporation Commission, 205 Okl. 672, 241 P.2d 363; Application of Choctaw Exp. Co., 208 Okl. 107, 253 P. 2d 822; and Application of Bennett, Okl., 353 P. 2d 114.

The order of the Corporation Commission is affirmed.

HALLEY, C.J., JACKSON, V.C.J., and WILLIAMS, IRWIN, and BERRY, JJ., concur. BLACKBIRD, J., dissents.



CENTRAHOMA AREA

COAL COUNTY, OKLA.

DATUM = TOP UNION VALLEY LIME

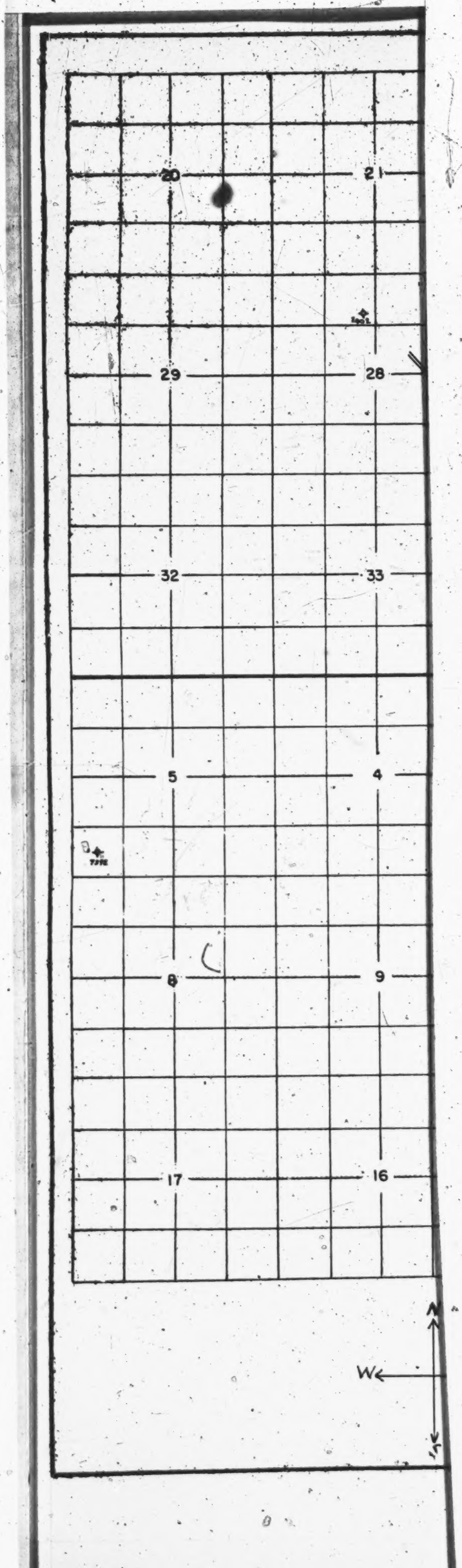
CONT. INT. = 50 FEET

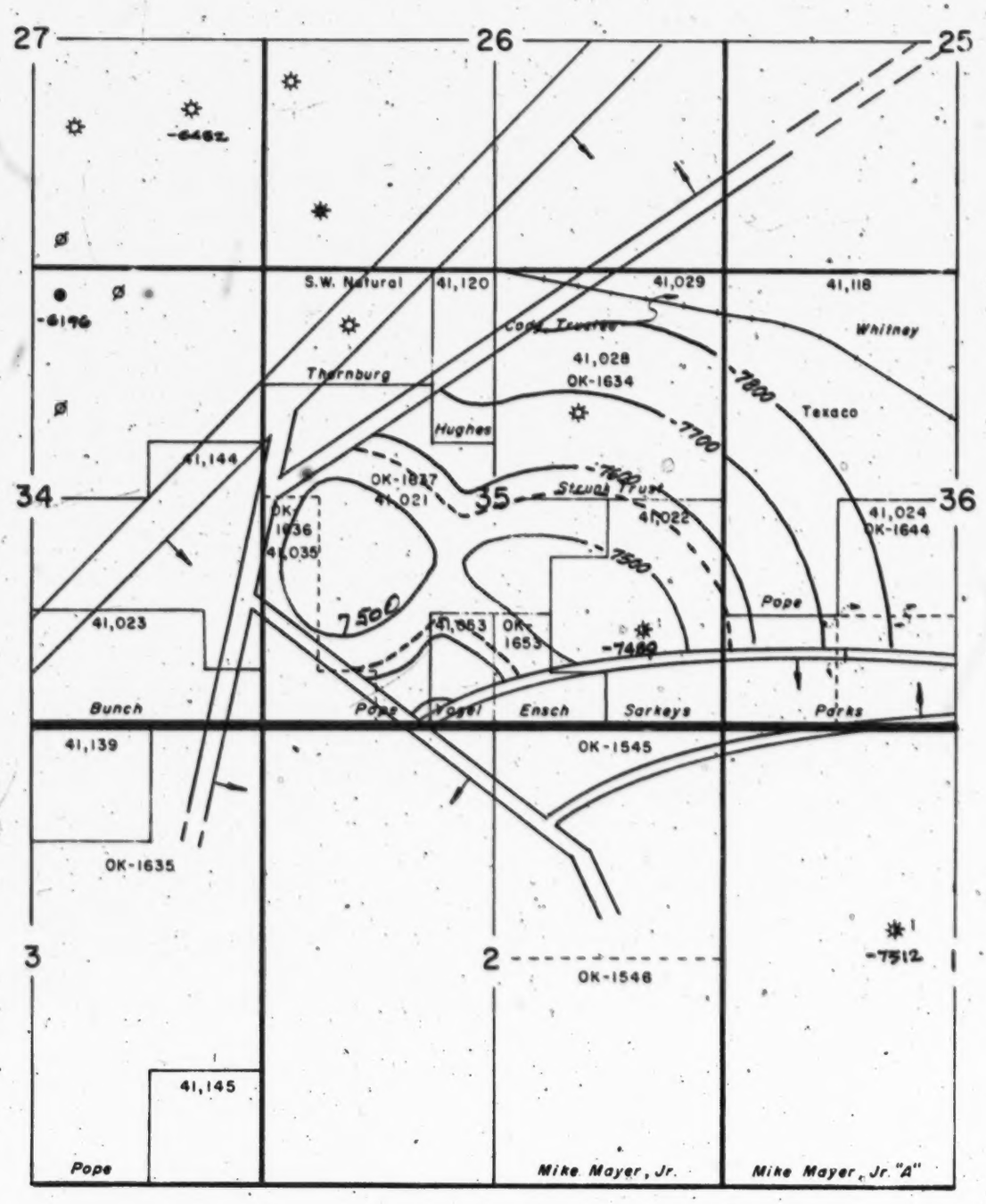
NOV., 1962 ROB'T. L. CASSINGHAM
Geologist

Pet. Ex. 9-A

12" wide

Exhibit 9A 1(b)


20
21
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28
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33
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16
N
W



TENNECO OIL COMPANY SUBSIDIARY OF TENNECO CORPORATION
S.E. CENTRAHOMA FIELD COAL COUNTY, OKLAHOMA
INTEGRATED SUBSURFACE AND SEISMIC STRUCTURE MAP TOP OF ~~Booch 3~~ Big Piney SAND C.I.: 100' SCALE IN FEET 2000 1000 0 2000 4000 OKLAHOMA CITY, OKLAHOMA

Exhibit 10 1(c)

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FILED
JUN 10 1965
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 117

SNYDER VOGEL and SAM VOGEL,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and TENNECO OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

FERRILL H. ROGERS
Conservation Attorney
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma

Of Counsel:
WALKER, LAWRENCE & HARRIS
220 Cravens Building
Oklahoma City, Oklahoma

June, 1965

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8780

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APPENDIX

Opinion of the Supreme Court of Oklahoma, Vogel, et al. v. Corporation Commission, et al., No. 40526, February 9, 1965 ____ i-v

In the
Supreme Court of the United States

OCTOBER TERM, 1964

No. 1140

SNYDER VOGEL and SAM VOGEL,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and TENNECO OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Ferrill H. Rogers, on behalf of the Respondents, prays that the Petition for the Writ of Certiorari to review the decision of the Supreme Court of the State of Oklahoma in the above entitled case be denied.

OPINION BELOW

The opinion of the Supreme Court of the State of Oklahoma in No. 40525, dated February 9, 1965, is set out *infra* in the appendix hereto, pages i-v.

JURISDICTION

Jurisdiction of the Supreme Court of the United States has been involved by Petitioners pursuant to Title 28, U. S. Code, Section 2101, and Rule 19 of this Court.

QUESTIONS PRESENTED

The Petitioners broach three questions:

1. In this case, is it a deprivation of due process of law and a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution for a Judge to participate in and write the opinion (concurred in by five other Justices) in a case when said Justice is subsequently suspended and impeached by the Legislature for having taken bribes in other cases?

2. Is it a deprivation of due process of law and a denial of equal protection of the laws under the Fourteenth Amendment to the Federal Constitution and under a similar provision of the Constitution of the State of Oklahoma where the Oklahoma Constitution provides:

> "The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts.
>
> "In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine * * * whether the findings and conclusions of the Commission are sustained by the law and substantial evidence,"

for the Oklahoma Supreme Couprt to apply a substantial evidence standard in sustaining a Corporation Commission Order, when the Petitioners contended that their constitutional rights have been denied because there is insufficient evidence in the record justifying the entry of an Order creating drilling and spacing units one mile wide east and west in view of the facts in this case?

3. Is the Order of the Oklahoma Corporation Commission such an unreasonable, arbitrary and discriminatory restriction on the use of private property as to be a deprivation of due process of law and a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pertinent provisions of the Constitution of the United States are as follows:

Fourteenth Amendment, Section 1:

> "* * * Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article II of the Constitution of the State of Oklahoma reads in pertinent part:

> "§ 23. *Private property—Taking or damaging for private use.*—No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across

lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

"§ 24. *Private property—Public use—Character of use a judicial question.*—Private property shall not be taken or damaged for public use without just compensation. Such compensation, irrespective of any benefit from any improvements proposed, shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected from the regular jury list of names prepared and made as the Legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. * * * When possession is taken of property condemned for any public use, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question."

Article IX, Section 20 of the Constitution of the State of Oklahoma reads in pertinent part:

"The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only,

and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts.

"In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority and entered findings and conclusions of the Commission which are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment either affirming or reversing the order of the Commission appealed from."

Pertinent provisions of the statutes of the State of Oklahoma relating to power and authority of the Corporation Commission to establish well spacing and drilling units are:

Sec. 87.1(a), Title 52, O.S.A.:

"To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma . . ."

Sec. 87.1(b), Title 52, O.S.A.:

"In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage

to be embraced within each unit and the shape thereof shall be determined by the Commission from evidence introduced at the hearing, . . .

"The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area; which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information . . ."

Sec. 86.3, Title 52, O.S.A.:

"The term 'waste,' as applied to gas, in addition to its ordinary meaning, shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply, the inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and com-

pletion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply . . ."

PRELIMINARY STATEMENT

The Tenneco Oil Company, Respondent herein, drilled its Sarkeys No. 1 Well in the SE/4 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma (R., Ex. 9A).

That well encountered two separate common sources of supply of gas and gas condensate. The first such common source of supply is the Basal McLish Sand (R. 32). This sand is about 20 feet in thickness (R. 33). The estimated cost of drilling and completing a well to that common source of supply is $180,000.00 (R. 32).

The next common source of supply is the Oil Creek Sand (R. 32). This sand is approximately 60 feet in thickness (R. 33). It is estimated that the cost of drilling and completing a well to the Oil Creek Sand is approximately $200,000.00 (R. 33).

After drilling and completing the Sarkeys No. 1 Well, and after having gained the geological and engineering information resultant from such drilling and completion, already having information as to numerous other wells in the area, Tenneco Oil Company filed an application with the Commission and requested that all the S/2 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, be declared a drilling and spacing unit for each of the two beforementioned common sources of supply.

When the application came on for hearing before the Corporation Commission, Petitioners herein appeared and protested the granting of the application and protested the establishing of the drilling and spacing unit for each of the common sources of supply and asserted in connection with such objections that "this unit does not extend to underlay the SW/4 of Section 35. *We think it's a small unit which covers just the SE/4 . . .*" (Emphasis ours.)

After hearing the testimony involved in this particular hearing, as well as being fully familiar with the general area under consideration by reason of hearings held on applications for 320-acre drilling and spacing units for the Basal McLish Sand and the Oil Creek Sand common sources of supply underlying all of Section 1, Township 1 North, Range 9 East, adjoining the southeast corner of Section 35, described above, the Commission granted the application of Tenneco Oil Company. The Oklahoma Corporation Commission established a 320-acre drilling and spacing unit for the production of gas and gas condensate from each of the beforementioned common sources of supply, that is the Basal McLish Sand and the Oil Creek Sand. The unit so established comprises the S/2 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma (R., Ex. 8).

The Court will please keep in mind that the Oklahoma Corporation Commission is a governmental body of specialized jurisdiction. The Commission and its staff are specialists in the field of oil and gas production and operation insofar as same relate and pertain to the protection of correlative rights and the prevention of waste. In reviewing

the facts upon which the Commission predicated the Order on appeal here, this Court will please remain ever cognizant of that premise so that the Court will not be prone to substitute its judgment for that of the Commission where interpretations of geological and engineering data are concerned.

ARGUMENT IN OPPOSITION TO GRANTING OF WRIT

Question 1

Petitioners assert that the opinion of the Oklahoma Supreme Court in the instant case deprives them of due process of law and denies them equal protection of the law because of Justice Johnson's participation in the case, and also because he wrote the opinion.

Petitioners' allegations with respect to Justice Johnson are true. The charges in each instance, as stated by Petitioners, arose out of the cases of *Selected Investments Corp.* v. *Oklahoma Tax Commission* and *Oklahoma Co.* v. *O'Neill.*

Atrocious as the acts of Justice Johnson might have been in those cases, we are not willing to spread the hateful cloud of guilt by association over the five other justices who participated in the majority opinion in the instant case.

To accept the argument of Petitioners would be to impeach and find guilty the remaining members of the Court. Were Justice Johnson sitting as a one-man appellate body in this case, then perhaps the arguments called forth might

have appeal, if not merit. However, to say that Justice Johnson's participation should vitiate the Court's opinion, is to say that not only was he corrupted in this case, but he also corrupted five of the six other justices who participated in the case. Petitioners cite, at page 12 of their Petition for Writ, the case of *Buchalter* v. *New York*, 319 U.S. 427 (1943). In that case the Court said, at page 431:

> "As we have recently said, it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality."

There is no alleged overt malfeasance on the part of Justice Johnson in this case. Demand is made that Petitioners be required to show a specific allegation of the occurrence of corruption in the case. They have tried to impute guilt through resort to indirect implication. Justice Johnson was charged with specific malfeasance in two specific cases, but not in this. Must every justice ever associated on the Supreme Court with Justice Johnson bear the stigma of his acts in two cases? Must every litigant, whose case has been affirmed by the Supreme Court while Johnson was on the bench be indirectly accused of bribing him?

It is of concern here as to whether the allegation of deprivation of due process and denial of equal protection is well founded. To bottom such an allegation on the sheer speculation, as have Petitioners, that Justice Johnson exercised prejudicial influence on the five remaining justices

who voted with him in this case is to indulge in fantasy. The Court composed of seven justices, acted in this matter and *not* one justice. The Court was competent under the laws of Oklahoma to act. The Petitioners, in their Petition for Writ at pages 11 and 12 cite a decision of this Court in the case of *Jordan* v. *Massachusetts*, 225 U.S. 167 (1912). In that case this Court said, at page 335:

> "But to say that due process is denied when a competent state court refuses to set aside the verdict of a jury because the sanity of one of its members was established by only a preponderance of evidence would be to enforce an exaction unknown to the precedents of the past, and an interference with the discretion and power of the state not justified by the demands of justice, nor recognized by any definition of due process."

In substance the Petitioners are claiming that Justice Johnson's presence and participation in this case has denied them of fair play on the Oklahoma Supreme Court and that his presence and participation precluded the majority of the Court from impartially reviewing the Order of the Corporation Commission which had been presented to it. If such is the case, the Respondents herein could likewise claim that Justice Johnson's presence and participation in the case destroyed the ideal system for the administration of justice which every State should have and enforce.

> "The due process clause does not impose upon the state a duty to establish ideal systems for the administration of justice, with every modern improvement and with provision against every possible hard-

ship that may befall." *Snyder* v. *Massachusetts*, 291 U.S. 97, 105 (1934).

Of course, a fair trial or a fair hearing is implicit within the term "due process of law." In order, however, to constitute a deprivation of due process of law, the denial of a right asserted must have so fatally infected the trial or the hearing that such a destruction, if any, of the Petitioners' rights ensured as to have violated the fundamental aspects of fairness and as to have resulted in a miscarriage of justice. The process of law clause required only that a party be accorded that degree of fundamental fairness essential to the very concept of justice. *Curran* v. *State of Del.*, D.C. Del. 1957, 154 F.Supp. 27, *affirmed* 259 F.2d 707, *certiorari denied* 79 S.Ct. 355, 358 U.S. 948, 3 L.Ed.2d 353.

The presence of the other justices on the Supreme Court of Oklahoma insured the Petitioners of the fairness required to assure them of proper due process of law. Without them there might be some credence to be placed in Petitioners' assertions. As the facts are, however, the assertions should be cast aside.

Questions 2 and 3

Questions 2 and 3 are so closely related that they will be discussed together.

Apparently, Petitioners would have this Court analyze every shred of evidence presented to the Oklahoma Corporation Commission and substitute its judgment on the conflicting testimony for the combined judgments of the Corporation Commission and the Oklahoma Supreme Court. Why

else would Petitioners resort in their Petition for Writ to such a detailed arguing of the evidence particularly when the entire record of the Corporation Commission proceedings have been submitted to this Court?

In *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, Tex. 1941, 61 S.Ct. 343, 311 U.S. 570, 85 L.Ed. 358 (See also, *Railroad Commission of Texas* v. *Humble Oil & Refining Co.*, 1941, 61 S.Ct. 347, 311 U.S. 578, 85 L.Ed. 363). The District Court enjoined as unreasonable the enforcement of an Order of the Texas Railroad Commission fixing and allocating allowables for the East Texas oil field. In striking down the action of the District Court as improper this Court pointed out that there is nothing in the Constitution to warrant a rejection of the Commission's expert conclusions, and "due process of law" within the Fourteenth Amendment does not require the judgment of the expert Commission to be supplanted by an independent review of judges on the conflicting testimony and prophesies and impressions of expert witnesses.

Also, in *Sun Oil Co.* v. *Burford*, C.C.S., Tex. 1941, 124 F.2d 467, *vacated* 130 F.2d 10, *reversed* 63 S.Ct. 1098, 319 U.S. 315, 87 L.Ed. 1424, *rehearing denied* 63 S.Ct. 1442 (2 cases) 320 U.S. 214, 87 L.Ed. 1951, this Court held that in the absence of a clear showing of confiscation or lack of due process of law, bodies like the Railroad Commission of Texas, which have attempted to work out a system for equitably controlling the production of gas and oil, should be left, at least by the Federal Courts to deal with the situation unless the Court of last resort of the State has de-

cided that an independent judgment with respect to reasonableness should be exercised by the Courts.

Petitioners want this Court to substitute its judgment for that of the Oklahoma Corporation Commission and for that of the Oklahoma Supreme Court on purely factual questions. It has always been the rule of law in Oklahoma and Oklahoma Supreme Court's interpretation of Oklahoma's constitutional provision (Article 9, Paragraph 20, Constitution of Oklahoma quoted above) that:

> "An order of state Corporation Commission must be lawful and supported by competent and substantial evidence to be sustained on appeal to Supreme Court, *whether appeal involves asserted violation of constitutional rights, so as to require Supreme Court to exercise its own independent judgment on both law and facts, or is in category of other appeals, wherein Const. art. 9 Sec. 20, limits court to determination of questions whether Commission regularly pursued its authority or whether its findings and conclusions are sustained by law and substantial evidence.*" (Emphasis added.)

Anderson-Prichard Oil Corp. v. *Corporation Commission*, 205 Okla. 672, 241 P.2d 363, *appeal dismissed* 72 S.Ct. 562, 342 U.S. 938, 96 L.Ed. 698.

This Court has recognized that the police power of the State extends to the regulation of the drilling of oil and gas wells, as provided in Oklahoma's drilling and spacing unit law (Sec. 87.1, *et seq.*, Title 52, O.S. 1961), and that the establishing of such drilling and spacing units for a conservation purpose does not violate provisions of the Okla-

homa and Federal Constitutions as taking property without just compensation or without due process of law.

Patterson v. *Stanolind Oil & Gas Co.*, 77 P.2d 83, 59 S.Ct. 259, 305 U.S. 376, 83 L.Ed. 231.

Petitioners, however, attempt to revive contentions against this exercise of the police power by asking whether the Corporation Commission's action in establishing the 320-acre drilling and spacing unit is such an unreasonable, arbitrary and discriminatory restriction on the use of private property as to be a deprivation of constitutional rights. The answer to this question, in light of the *Patterson* case cited above, is simply "no" provided, of course, the action of that Commission is supported by substantial evidence.

Petitioners imply that the Corporation Commission acted through will or caprice or in some despotic or absolute manner without reason and without purpose. They assert that the Supreme Court of Oklahoma condoned this arbitrariness and acted improperly when it stated in its opinion in this case:

> "The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States *because there is insufficient evidence 'in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case.' This quoted language is from the brief of appellants. The claimed violation of appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two,*

supra, namely, that the evidence is insufficient to justify the order entered." (Emphasis added.)

In this Court the Petitioners are asserting that the Oklahoma Supreme Court is incorrect in applying the "substantial evidence" standard.

The Petitioners in the Oklahoma Supreme Court, however, urged the approach that the said Supreme Court *apply* the substantial evidence rule in arriving at a decision.

> "We are fully aware of the basic law to the general effect that a Finding of Fact, supported by competent evidence, is *binding on this court.* We propose to assume the burden of proving that the Finding of Fact causing the Corporation Commission to fix such drilling and spacing units is not supported by competent evidence." (Petitioners Brief before Oklahoma Supreme Court, page 2; emphasis added.)

Then Petitioners, after analyzing the evidence presented before the Oklahoma Corporation Commission, in that brief, proceeded to "challenge the Order of the Corporation Commission as being in violation of their constitutional rights" and cited:

> —*Mee* v. *Corporation Commission* (Okla. 1956), 293 P.2d 593;
>
> *Anderson-Prichard Oil Corporation* v. *Corporation Commission* (cited above);
>
> *Carter Oil Co.* v. *State,* 240 P.2d 787,

with the conclusion that:

> "We have cited the cases above *to impress on this Court that it is its duty to examine the record in this*

case to determine if any substantial evidence is reflected which justifies the Commission in entering the order. If there is no substantial evidence in the Record then it is obvious that the inclusion of the SW 1/4 of Section 35 as a part of the drilling and spacing unit is an impingement on the rights of the Vogels and deprives them of their property rights because it results in a dilution of their royalty by approximately 40%." (Petitioners' Brief before Oklahoma Supreme Court, page 23; emphasis added.)

Thus, in the Oklahoma Supreme Court, below, the Petitioners urged that Court to apply the "substantial evidence" standard in determining the validity of the contentions there made. In this Court, Petitioners contend that the Oklahoma Supreme Court was wrong in applying the "substantial evidence" test in determining whether constitutional rights have been infringed. On which leg and in which Court do Petitioners intend to stand?

The United States Court will assume that a state statute capable of an interpretation effecting a constitutional result will be given that interpretation by the State Supreme Court charged with the duty of finally interpreting it. *National Fertilizer Ass'n* v. *Bradley*, D.C., S.C. 1936, 18 F.Supp. 263, *affirmed* 59 S.Ct. 748, 301 U.S. 178, 81 L.Ed. 990. This the Oklahoma Supreme Court has done in its construction of Oklahoma's constitutional provision having to do with review requirements with respect to Corporation Commission Orders.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

FERRILL H. ROGERS
Conservation Attorney
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma

Of Counsel:
WALKER, LAWRENCE & HARRIS
220 Cravens Building
Oklahoma City, Oklahoma

June, 1965

APPENDIX

VOGEL ET AL.
v.
CORPORATION COMMISSION ET AL.

No. 40526. Feb. 9, 1965.

* * * * * * * * * *

JOHNSON, J. This is an appeal from an order of the Corporation Commission, creating one drilling and spacing unit consisting of the S-½ of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma. Such unit was created for the production of natural gas and condensate from the Basal McLish and Oil Creek Sands.

The plaintiffs in error submit two propositions for the vacation of the order as follows:

"Plaintiffs in error challenge the order of the Corporation Commission as being a violation of their Constitutional rights.

"There is no substantial evidence in the record authorizing the entry of the spacing order."

In Finding No. 5 the Commission made this statement, which summarizes the controversy:

"5. The principal dispute in this cause is whether or not the SW/4 of said Section 35 is underlain by productive Basal McLish and Oil Creek Sands; * * *"

After making a resumé of the testimony, the Commission made Finding No. 8 which is as follows:

"8. Taking into consideration all of the evidence, facts and circumstances in this cause, it would appear that some substantial portion of the SW/4 is underlain by these common sources of supply, and therefore an order should be made establishing the S/2 of Sec-

tion 35 as a drilling spacing unit for the Basal McLish Sand and for the Oil Creek Sand, and the Sarkeys No. 1 Well, located in the NW/4 of the SE/4 of the SE/4 of Section 35, should be the permitted well for said unit."

It is this finding to which objection is made.

The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States *because there is insufficient evidence "in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case." This quoted language is from the brief of appellants. The claimed violation of appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two, supra, namely, that the evidence is insufficient to justify the order entered.* (Emphasis added.)

We therefore proceed to a consideration of Proposition Two. *The entire objection to the order is that there is insufficient evidence to justify the inclusion of the SW/4 of Section 35,* and therefore the royalties of the plaintiffs in error would be reduced by approximately forty percent (Emphasis added.)

It is conceded by both parties that the rule is correctly stated in the case of Mee v. Corporation Commission, Okla., 293 P.2d 593, from which the following is quoted:

> *"The rule is well established that if an order of the Corporation Commission appealed from is found to be supported by substantial evidence, it will be affirmed by this Court.* The rule is clearly stated in Woody v. State Corporation Commission, Okla., 265 P.2d 1102,

1106, wherein it is stated in the body of the opinion: (Emphasis added.)

"'* * * In the orderly administration of law we must indulge the presumption that the Commission's order is just, reasonable and correct.

"'* * *

"'Our appellate jurisdiction, as applied to the case before us, is judicial only, and is limited to a consideration whether the Commission has legally pursued its authority, and whether its findings and conclusions are sustained by the law and substantial evidence * * *.'"

This controversy hinges upon the single question of whether there was substantial evidence to support the order entered. The plaintiffs in error contend that there is no substantial evidence to show that there was a probability of production under the SW/4 of Section 35. The precise contention is that the opinions of the Tenneco experts were based wholly upon seismic information which it said was "questionable," "not substantial" and "not persuasive." (Emphasis added.)

We do not deem it necessary to determine that seismic data of the character introduced is insufficient to sustain the order entered or does not constitute "substantial" evidence within the definition established by our previous opinions. In this case there was other evidence. (Emphasis added.)

We quote excerpts from the testimony of the geologist testifying for applicants. After stating that since production could, in his opinion, be had in the SW/4 of Section 35, he pinpointed the sources from which his opinion was formed, as follows:

[APPENDIX]

"Q. What evidence do you have that any part of the Southwest Quarter of Section 35 will be productive? A. It's based on seismic data in the area.

"Q. Is it based entirely on seismic information? A. We also have a knowledge of the producing trend that runs through this area. We are generally looking at a ridge running through the area and we feel that this ridge continues on slightly north of west from the Sarkeys Well in this same section.

"* * *

"Q. (By Mr. Walker) With respect to Exhibit 10, let me ask you what the information is comprised of? I don't even know myself. A. We have the well records of the wells we drilled; we have the logs and the scout tickets of the wells immediately northwest of this area; we also had the seismic records in this area.

"* * * .

"Q. On the Sarkeys Well you have a minus 7489. What is that? A. That's the top of the Oil Creek.

"Q. How did you arrive at the gas-water contact? A. That is based on information on the electric log.

"* * *

"Q. Does Exhibit 10 bear out that interpretation of the area? A. Yes, sir.

"Q. And based on that, the Southeast Quarter of Section 35 would be wholly underlain by each common source of supply involved which would contribute gas to the well involved? A. It wouldn't be wholly underlain but substantially, yes, sir.

"* * *"

We have been cited to no authority which holds that seismic data is not sufficient upon which to base an opinion

as to the productivity of an area. But if additional information is required, we are of the opinion and hold that the quoted testimony shows additional information upon which the opinion was based. (Emphasis added.)

The quoted evidence is sufficient to come within the rule set forth in Superior Oil Co. v. Oklahoma Corporation Commission, 206 Okl. 213, 242 P.2d 454, wherein we said in the body of the opinion:

> "We concede that the Corporation Commission has a wide discretion in the performance of its statutory duties. We cannot substitute our judgment on disputed questions of facts unless the findings of the commission are not as commanded by the Constitution, supported by the law, and substantial evidence."

See, also, Pannell v. Farmers Union Cooperative Gin Association of Sterling, 192 Okl. 652, 138 P.2d 817, Chicago R. I. & P. Ry. Co. v. Vogel, 195 Okl. 194, 156 P.2d 620; Yellow Transit Co. v. State, 198 Okl. 229, 178 P.2d 83; Cities Service Oil Co. v. Anglin, 204 Okl. 171, 228 P.2d 191; Anderson-Prichard Oil Corp. v. Corporation Commission, 205 Okl. 672, 241 P.2d 363; Application of Choctaw Exp. Co., 208 Okl. 107, 253 P.2d 822; and Application of Bennett, Okl., 353 P.2d 114.

The order of the Corporation Commission is affirmed.

HALLEY, C.J., JACKSON, V.C.J., and WILLIAMS, IRWIN, and BERRY, JJ., concur. BLACKBIRD, J., dissents.

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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 117

SNYDER VOGEL AND SAM VOGEL, *Petitioners*,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND TENNECO OIL COMPANY, *Respondents*.

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

CARL L. SHIPLEY
1366 National Press Building
Washington, D. C. 20004
Attorney for Petitioners

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1366 National Press Building
Washington, D. C. 20004

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Carl L. Shipley, on behalf of the petitioners herein, acting pursuant to Rule 24(4) of this Court's Rules, herewith replies to respondent's brief in opposition to their petition for a writ of certiorari to the Supreme Court of the State of Oklahoma, and reassert their request that the petition for a writ of certiorari to review the decision of the Supreme Court of Oklahoma in the above entitled case be granted.

STATEMENT

Respondents argue in opposition to the grant of a writ in the above entitled case that "atrocious as the acts of Justice Johnson might have been in most cases, we are not willing to spread the hateful cloud of guilt by association[1] over the five other justices who participated in the majority opinion in the instant case.

"To accept the argument of petitioners would be to impeach and find guilty the remaining members of the Court."

The facts of public record are that Oklahoma Supreme Court Justice Napoleon Bonaparte Johnson, who deliberated on, participated in, and wrote the opinion in petitioners' case, was indicted, prosecuted, convicted, impeached, and convicted on impeachment of being a bribe-taker, i.e., a judge who accepted money to exercise his judicial power in favor of bribe-givers, without regard to the merits of the case. Petitioners do not allege, because they do not know, whether Justice Johnson did or did not in fact accept bribes in connection with their case. Petitioners assert that they are not required under the due process provisions of the Federal Constitution to play cat and mouse, or engage in guessing games to try to determine whether there was bribery in their case. Since the date on which they filed their petition in this Court for a writ of certiorari, two other justices of the Oklahoma Supreme Court, who participated in the decision in petitioners' case herein, have been accused of taking bribes by Justice N. S. Corn, one of their former colleagues on the bench, during the course of his testi-

[1] "Guilt by Association", 21 Journal of the Bar Association of the District of Columbia 16 (Jan. 1954).

mony in criminal proceedings in a Federal court in Oklahoma, as set forth in the June 4, 1965, Oklahoma City Times, and the June 5, 1965 Daily Oklahoman, copies of which are included herewith at Appendix 1a.

Petitioners do not include these newstories as proof of the allegations by Justice Corn contained therein. But these reports of testimony under oath in a Federal court certainly can be the basis for judicial notice by this Court that a miasma of doubt, a fog of suspicion, and a prima facie case of uncertainty as to the integrity and fairness of the Oklahoma Supreme Court existed at the time petitioners' case was decided.

Petitioners call to the Court's attention that two of the three accused judges participated in the decision in petitioners' case, i.e., Chief Justice Harry L. S. Halley and Justice W. H. Blackbird, who dissented. It is to be noted in these reports that at least one of the cases in which Justice Johnson accepted a bribe was, like petitioners' case, an oil-lease case, e.g., *Marshall* v. *Amos*. Whether the decision in petitioners' case was right or wrong, and whether or not the other justices who participated in that decision were honest or dishonest, and whether or not Justice Johnson actually received a bribe in petitioners' case, is not material to petitioners' rights under the Federal Constitution to have their case determined by an impartial, honest, and objective state judiciary.

It is petitioners' position that the decision of the Oklahoma Supreme Court in their case is fatally defective under the due process clause of the Federal Constitution, because it was written by a corrupt and venal Justice of the State Supreme Court, and participated in by other justices enveloped in a cloud of suspicion.

When Judge Manton of the U. S. Circuit Court of Appeals was tried some years ago for criminal conspiracy to obstruct the administration of justice, the U. S. Court of Appeals, Second Circuit, (*U.S.* v. *Manton*, 107 F. 2d 834, cert. den., 309 U.S. 664) said:

> "* * * The conspiracy here contemplated the payment of money to induce a judge to exercise his judicial power in favor of the bribe-givers, without regard to the merits. If the decisions finally rendered in pursuance of the conspiracy be legally sound the fact is immaterial. * * *
>
> "We cannot doubt that the other judges who sat in the various cases acted honestly and with pure motives in joining in the decisions. No breath of suspicion has been directed against any of them and justly none could be. And for aught that now appears we may assume for present purposes that all of the cases in which Manton's action is alleged to have been corruptly secured were in fact rightly decided. But the unlawfulness of the conspiracy here in question is in no degree dependent upon the indefensibility of the decisions which were rendered in consummating it. Judicial action, whether just or unjust, right or wrong, is not for sale; and if the rule shall ever be accepted that the correctness of judicial action *taken for a price* removes the stain of corruption and exonerates the judge, the event will mark the first step toward the abandonment of that imperative requisite of even-handed justice proclaimed by Chief Justice Marshall more than a century ago, that the judge must be 'perfectly and completely independent with nothing to influence or control him but God and his conscience.'"

Petitioners herein verily believe that the Federal Constitution assures to them as a part of due process the right to a decision by a Court which is free from a reasonable suspicion of corruptness.

As indicated in the attached news stories, petitioners now have no assurance that Justice Johnson was the only corrupt member of the Supreme Court of Oklahoma at the time the decision in their case was made. The protection of the due process clause is completely nullified, if petitioners must first prove actual venality in their specific case, as distinguished from making a prima facie showing that one or more of the justices were corrupt in other cases, including oil lease cases, thus making them incompetent and untrustworthy in discharging their judicial functions in all cases.

Respondents' brief in opposition to the petition for a writ of certiorari herein suggests at page 14 that "petitioners want this Court to substitute its judgment for that of the Oklahoma Corporation Commission, and that of the Oklahoma Supreme Court on purely factual questions."

Petitioners respectfully submit that this is not what petitioners have asked. Petitioners have asked that this Court grant a writ of certiorari in order to consider the important constitutional question of whether or not the Supreme Court of Oklahoma is required to follow Article IX, Section 20 of the Constitution of the State of Oklahoma, which requires the Supreme Court in the review of appealable orders of the Corporation Commission to "exercise its own independent judgment as to both the law and the facts," instead of following the other provisions of that Article of the Oklahoma Constitution which authorize the Supreme Court to determine non-constitutional appeals from the Orders of the Corporation Commission on the basis of whether or not the findings and conclusions of the Commission are "sustained by the law and substantial evidence."

The obvious purpose of this Article of the Oklahoma Constitution is to establish for the Supreme Court not one, but two, standards of review with respect to orders of the Oklahoma Corporation Commission. One is the "substantial evidence" standard, to be applied in non-constitutional cases, and the other is a *de novo* determination as "to both the law and the facts" by the Supreme Court in Oklahoma Corporation Commission matters where there has been asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, as was the case in respect of petitioners' proceeding, which is the subject of the petition herein.

The Supreme Court of the United States in the past has not hesitated to construe provisions of state Constitutions and to determine whether or not enactments of state legislatures conform to those provisions, and whether a state constitution and/or state legislation conforms to the requirements of the Federal Constitution, in appropriate cases. For example, in *Gelpcke* v. *Dubuque,* 1 Wall. 175, this Court said:

> "We are not unmindful of the importance of uniformity in the decisions of this Court, and those of the highest local courts, giving construction to the laws and constitutions of their own states. It is the settled rule of this court, in such cases, to follow the decisions of the state courts. But there have been heretofore, in the judicial history of this court, as doubtless there will be hereafter, many exceptional cases. We shall never immolate truth, justice and the law because a state tribunal has erected the altar and decreed the sacrifice."

A related aspect of this problem is discussed in *Muhlker* v. *N.Y. and Harlem R. Co.,* 197 U.S. 544, and Justice Frankfurter expressed some views along simi-

lar lines in *Oklahoma Packing Co. et al.* v. *Oklahoma Gas & Electric Co.*, 309 U.S. 703, (which was later withdrawn and replaced by the decision reported at 308 U.S. 530). When petitioners herein acquired their interest in the oil leases involved, they anticipated and expected that the Oklahoma Corporation Commission would not only follow the provisions of the Constitution of the State of Oklahoma and the Federal Constitution, but it was an element of their contract that the decisions of the Commission in constitutional cases would be subjected to the checks and balances of an independent review as to both the law and the facts by the Supreme Court of Oklahoma, as provided in the Constitution of the State of Oklahoma. A departure by the Supreme Court of Oklahoma from the provisions of the Constitution is an impairment of their contract rights and a contravention of the protection provided to them under the Federal Constitution, pursuant to Article I, Section 10 and the Fourteenth Amendment.

CONCLUSION

Respondents' brief in opposition to petitioners' application for a writ of certiorari does not fairly meet the issues presented, i.e. whether the fact that a justice of the Supreme Court of Oklahoma, who writes the opinion in a case, and who is subsequently impeached and convicted for accepting bribes for exercising his judicial authority in behalf of bribe-givers, so vitiates and corrupts the judicial process as to be a denial of due process under the Federal Constitution; whether a state Supreme Court can ignore the provisions of the constitution of the state with respect to the judicial process; and whether an arbitrary administrative decision of a state agency is a denial of due process and

equal protection of the laws under the Federal Constitution. Instead it relies upon implied arguments that petitioners are spreading a "hateful cloud of guilt by association over the five other justices" and that they are trying "to impeach and find guilty the remaining members of the Court."

The guarantees of due process of law and equal protection of the laws are meaningless in the Federal Constitution if the Supreme Court of a state can ignore provisions of its own constitution, or if corrupt justices of a state Supreme Court are beyond the reach of the Supreme Court of the United States in applying Federal constitutional standards, or if state administrative agencies are free to make arbitrary and capricious administrative determinations, without being held to the uniform national standards of due process provided in the Federal Constitution. These are important questions which not only have not been heretofore determined by this Court, but which have an immediate and far-reaching impact on the expanding definition of the federal-state relationship under the Federal constitution.

CARL L. SHIPLEY
1366 National Press Building
Washington, D. C. 20004
Attorney for Petitioners

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1366 National Press Building
Washington, D. C. 20004

APPENDIX

APPENDIX

[From OKLAHOMA CITY TIMES, June 4, 1965]

CORN IMPLICATES MORE JUDGES

CALM CHARGE OF BRIBERY STUNS COURT

The conversational nonchalance of his words could not erase their impact.

They were words that stunned a federal courtroom into silence.

They were words that will ricochet through the minds of scandal-plagued Oklahomans, who may have thought they had heard the last about corruption on their supreme court.

With the ease that a person could recount the names of his children, former Justice N. S. Corn ticked off the names of three present members of the state supreme court.

He said O. A. Cargill sr., defendant in a federal court perjury trial, told him they were involved in a supreme court fix.

He wasn't talking about Earl Welch or N. B. Johnson, former justices who already have been linked to bribery scandals.

Nor was he talking about any retired or deceased members of the supreme court.

In barely five seconds, Corn threw a cloud of suspicion on the chief justice of the supreme court, Harry L. S. Halley.

He threw it on the immediate past chief justice, W. H. Blackbird.

And he threw it on Denver Davison, a veteran member of the high court.

Until Corn's testimony, none of the three had been linked to bribery allegations.

Corn was testifying about various conversations he claims to have had with Cargill.

The only forewarning of the charge to come was when Corn claimed Cargill told him he had a "big deal" working on the Marshall vs. Amos case before the supreme court.

"He said it was a $25,000 deal and would be split six ways," Corn said.

U. S. District Attorney B. Andrew Potter asked the key question:

"Who else did he say was involved?"

Corn replied: "He said the two Indians (later identified as Johnson and Welch), Davidson, Halley and Blackbird."

Cargill Winces

Corn testified that Cargill said he personally would "take care of" Davison and the two Indians.

Corn quoted Cargill as saying a Tulsa attorney would "handle Halley" and that a Bristow attorney would "take care of" Blackbird.

The defendant winced, then managed a faint smile as he listened to Corn's searing words.

Legs crossed, Cargill leaned forward in his chair and cupped his left hand to his ear.

Glanced at Jury

Corn glanced directly at the jury as he spoke. He tapped a nervous cadence with his left hand on the front of the witness stand.

After Corn finished his testimony and court was recessed, Cargill was moved to speak.

In a loud voice, near the federal building elevators, he claimed his innocence to a friend.

He spoke not of Corn's testimony but of the earlier testimony of Hugh A. Carroll.

'He Knows It'

"He knows it didn't happen that way," Cargill said. "As God is my witness, he knows it."

The ease with which Corn recited the names of the supreme court justices was apparently matched only with the ease in which he says he accepted bribes.

Corn testified it took no more than a phone call from Cargill to get him to support Cargill's side in a lawsuit before the supreme court.

Years Are Listed

The former supreme court justice said Cargill would tell him to "follow the majority" or "follow the crowd."

Corn testified he followed Cargill's orders from 1936 to 1955.

He said that in return for the service, Cargill paid him $1,000 every time he ran for re-election to the supreme court.

In addition, Corn recalled three special "deals" with Cargill.

These included the Marshall vs. Amos case in which Corn said the other three justices were implicated by Cargill.

Also included was the Selected Investment Inc. case and Oklahoma Co. vs. O'Neil, a case involving Cargill's son-in-law, Corn testified.

At his first meeting with Cargill in 1936, Corn said, Cargill referred to several lawyers. Corn said Cargill told

him he was the kind of man "they wanted to keep on the court."

'GET YOUR PENCIL'

The testimony went on and on and Corn recounted the times he had been "bought."

When Cargill wanted his vote, Corn said he would call his supreme court office and say, "Get your pencil."

Corn said he would get his pencil and write down the name of the case.

[From OKLAHOMA CITY TIMES, June 4, 1965]

JUSTICE TELLS OF 'BIG DEAL' WITH CARGILL

By Tom Laceky

Former Justice Nelson S. Corn implicated three more supreme court justices Friday in bribery allegations.

Corn testified that O. A. Cargill sr. told him there was an arrangement in the Marshall vs. Amos case for the votes of Justices Earl Welch, N. B. Johnson, Denver Davison, Harry L. S. Halley and W. H. Blackbird.

The latter three justices had not been connected previously with bribery allegations. Halley is chief justice.

TRIO CLEARED BY BAR

A special committee of the Oklahoma Bar Association exonerated Blackbird, Davison and Halley a month ago. The committee declared the three justices "are honest men and have not been paid, nor have they received, any bribe in any case."

Corn also testified Friday he paid Cargill $2,500 to arrange for the vote of the late Justice W. A. "Lon" Carlile in the Selected Investments case before the court.

Corn said that in a 1963 conversation with Cargill he threatened to expose his "arrangements" with Cargill to federal income tax investigators.

'That Made Him Mad'

"That seemed to make him mad," Corn testified.

Corn said Cargill shouted in a loud angry voice: "By the time I get through with you, no one will believe a thing you say."

Corn's much-publicized, but as yet unrevealed, 84-page statement was turned over to Cargill's defense attorneys as soon as Corn's testimony was completed.

Along with it went six statements Corn said he had made to the Internal Revenue Service.

'It Makes Me Sick'

When Davison was told of Corn's testimony, he said, "I am surprised—and it makes me sick. Nobody has ever paid me a bribe."

He noted he had voted against the majority in the Marshall vs. Amos case. Corn also pointed that out in his testimony.

The other two justices implicated Friday could not be reached immediately for comment.

Corn delivered his testimony in a matter-of-fact, almost sing-song voice within moments after U. S. Attorney B. Andrew Potter called him to the stand at 9:55 a.m.

Phone Call Related

Corn was the first witness in Thursday's session of the federal perjury trial of Cargill.

Defense attorney Percy Foreman was given a recess until 1 p.m. as soon as Corn finished his testimony, to allow defense attorneys to read Corn's statements.

Corn testified Cargill's alleged statements came in a telephone call from Cargill in 1955, while the Marshall vs. Amos case was pending.

"He said to get my pencil and paper, that he was going to give me a case," Corn said.

"He said he had a big deal, $25,000 split six ways, and he would give me $4,000 for an opinion to reverse the (trial) court."

'I Told Him I Would'

"What did you tell him, Judge?" Potter asked.

"I told him I would."

"What else did you say?"

"I asked him who else was on the opinion," he said, the two Indians, Davison, Halley and Blackbird," Corn recalled.

He identified "the two Indians" as Welch and Johnson.

"He said all five would go along?" Potter asked.

Corn replied Cargill told him that Cargill had attorneys at Tulsa and Bristow "who took care of" two of the justices.

At the Capitol Justice Davison said:

'Dissented All the Way'

"Nobody has ever paid me a bribe. I concurred in the Oklahoma Co. case, but I dissented all the way in that other case (Marshall vs. Amos)."

"I know that during the bar investigation, Corn was asked about each member of the court, whether they had accepted bribes.

"When they came to my name he said, " 'Oh, no, no,' " Davison told newsmen.

"This is terrible. It just makes me sick."

Some of Corn's testimony corroborated that of Hugh A. Carroll, who earlier testified Cargill was involved in the Selected Investments Corp. case.

Corn said Cargill called him and asked the supreme court justice to notify Carroll to allow Cargill to represent Selected Investments.

Corn said Cargill said he would need to represent the failing company "so I can take care of the situation for us."

The former justice said he then called Carroll and told him to hire Cargill.

In another conversation with Cargill Corn said, he was told about the "Pierre Laval" story Carroll told in regard to $150,000 now identified as an alleged bribe.

"Everything is fixed," Corn quoted Cargill as saying.

Corn said Cargill told him that Carroll would tell a federal court that he "let a Canadian have the money."

She's 'Lined Up'

Corn said Cargill said he was having trouble with Mrs. Carroll, who did not want to go along with the Pierre Laval story.

However, Corn said that Cargill called the next morning to say Mrs. Carroll was "lined up."

"It's all right now," Cargill was quoted as saying.

Corn also testified Cargill paid him $7,500 to "fix" Welch and Johnson on the Oklahoma Co. vs. O'Neil case.

Key to Ouster

That alleged bribe was the key to the impeachment of Johnson by the state senate.

Corn told of meeting Cargill shortly after he was elected to the court, in 1936, as Potter supplied questions. After "establishing Corn's names, age, occupation ("retired") and physical condition, Potter asked:

"Do you know the defendant, O. A. Cargill?"

"Yes," Corn replied.

"When did you first meet him?"

'Yes, I Did'

"I think it was right after I came to the court."

"Did you ever have any financial transactions with the defendant, O. A. Cargill?"

"Yes, I did," Corn said.

"When was the first time?"

"Nineteen hundred and thirty-six."

"Where?"

"In Mr. Cargill's office in the Hales Building (107 N Robinson)."

Only Pair Present

Corn said only he and Cargill were present.

Potter then asked Corn to describe the circumstances.

Corn told of another telephone invitation to Cargill's office. Corn said only he and Cargill were present.

"He (Cargill) said he and some of his attorney friends had been discussing what kind of judge I would make," Corn began.

"He said they liked to be friends with all the judges, and he'd like to have me as the sixth judge to go along on opinions.

"I said there are nine members on the court, and that any five could make a majority. I said I didn't think it would do any good, going along as the sixth member," Corn recalled.

"He said, 'Oh, yeh, but I like to have a sixth man.'

"He said I was the kind of man they'd like to have on the court and they wouldn't have any trouble if I was properly financed.

"He said I would be allowed all the money I'd need."

Corn said Cargill promised him $1,000 each time Corn ran for office, plus a campaign fund.

Potter asked him if he remembered what cases Cargill had told Corn to vote on.

"No, I don't—there were a lot of them. He called me on a lot of them," Corn testified.

Corn specifically named three cases:

Marshall vs. Amos, Selected Investments Corp. vs. the Tax Commission and Oklahoma Co. vs. O'Neill.

Corn implicated the three justices previously not cited in bribery allegations in connection with Marshall vs. Amos.

[From THE DAILY OKLAHOMAN, June 5, 1965]

CARGILL MADE DEALS WITH RIVAL LAWYERS, FORMER JUSTICE SAYS

Corn Testifies of Hiding $97,000 Bribery Money In Old Shoes, Fruit Jars

By Katherine Hatch

O. A. Cargill sr., had "deals" with opposing attorneys in some cases before the state supreme court from 1936 until 1958, former Justice N. S. Corn testified Friday.

Corn also said he personally had hidden nearly $97,000 in bribe money in some "old shoes" at a golf course locker and buried in fruit jars in his yard.

Corn told Oklahoma City federal court jury hearing Cargill's perjury trial that the 80-year-old attorney frequently called to tell him how to vote on pending high court cases.

Asked on cross-examination why he failed to vote for an opinion favorable to Cargill's clients on some cases, Corn said:

"He didn't call me on those cases, or he called me and told me that he had the same kind of a deal with the other side and I voted the way I wanted to."

Asked if he meant the attorneys on the other side, Corn replied, "That's right."

Corn Only Witness

Questioned further, Corn added only that it was "the same deal and that it didn't make any difference for me to just vote however I wanted to."

The 81-year-old former justice and supernumerary judge remained on the witness stand all day, undergoing direct examination by U. S. Attorney B. Andrew Potter for 35 minutes, and cross-examination by chief defense counsel Percy Foreman, Houston, nearly four hours.

Corn said that in the Marshall vs. Amos oil lease case, Cargill told him five other high court justices had been taken care of.

Justices Named

In later testimony, he said that prior to 1955, Cargill hadn't disclosed the names of any other justices—besides himself—taking bribes for favorable decisions.

Named by Corn as those justices whom Cargill said were on the Marshall versus Amos opinion were Earl Welch, N. B. Johnson, Denver Davison, Harry L. S. Halley and W. H. Blackbird. (The latter three vigorously denied the accusation in an afternoon press conference at the capitol. Welch and Johnson no longer are on the bench).

$4,500 Paid?

Corn testified that Cargill paid him a total of $4,500 in regular payments while he was on the bench, $1,500 as an initial campaign fund and $1,000 each time he ran for re-election.

"What were you to do, if anything, for this alleged, $1,000 every six years?" Foreman asked.

"Well, I was to go along on opinions that he was interested in. . ." Corn replied.

After Corn said he voted with "the other five" in majority opinions, to give them more than a bare majority, Foreman said:

Any Others?

"Which of the other five members at any time—any five that you designate as the other five, you being the sixth man?"

"There wasn't anything said by Mr. Cargill about him handling any other judges or handling me either, for that matter," Corn said.

"From your 1936 agreement (with Cargill) up to 1955, were there any other individual judges that Cargill designated to you as the first five?"

"No, I don't think so," Corn said.

Calls Reported

Corn said Cargill called him "every time" there was a particular case, and that he voted "for every case he called me on . . . voted the way he wanted me to."

Foreman then cited, one at a time, a dozen supreme court cases in which Cargill was an attorney and which Cargill lost.

"I suggest that you didn't vote in five (of those cases), that you voted against him in four, and that you authored an opinion against him in yet another one," Foreman declared.

Cases Not Clear

". . . In only two of those cases that Cargill lost Nelson S. Corn voted for Cargill," he continued.

Corn said he lacked independent knowledge of the cases as Foreman described them, but repeated that Cargill had hold him he had "the same arrangement the other way . . . with the attorneys or someone on the other side."

Figuring the $4,500 into Corn's years on the bench, Foreman asked him if it weren't true that he was "working for less than 30 cents a day for Mr. Cargill?"

"I never did do any figuring," Corn said.

'Selling Your Oath'

"You were selling your oath of office for this pittance of money? Correct?" Foreman asked.

Corn turned toward U. S. District Judge Roy W. Harper, St. Louis, presiding over the trial, and said, "I don't believe he has worded that so I can give an intelligent answer, has he, judge?"

"That's up to you," Judge Harper replied.

Then Corn said, "I violated my oath and I ruined myself . . . I ruined myself completely, disgraced my family, disappointed my friends.

"The only thing left for me to do now is come in and tell the truth and that's what I'm doing."

Later, Corn admitted lying in statements he gave Internal Revenue agents, but said he wasn't under oath when he gave them.

He said if he had been put under oath, "Why then, I would have taken the Fifth Amendment."

Foreman asked Corn about a $150,000 bribe paid him by Hugh Carroll, founder of Selected Investments Corp., for an opinion favorable to Selected in a tax case against it by the Oklahoma Tax Commission.

Corn said he gave $7,500 each to Welch and Johnson.

"What did you do with the money after you got it?"

"I spent it various ways."

Corn said he kept some in a pair of old shoes in a locker at Lincoln Park golf course, buried some in fruit jars in his yard, and had other bills in filing cabinets at his capitol office and at home.

When Carroll told him in March, 1958, that he needed the money back, Corn gave him $33,000, but that wasn't all he had, he told the jury of 10 men and two women.

New Car Bought

"I told him I'd turn him back all that was available," Corn said, adding, "I could have got some more, I guess" from other hiding places.

Corn said the money was all gone after he paid taxes with interest and penalties and bought a new car.

Corn testified that Cargill had three high court opinions fixed: Marshall versus Amos, Selected versus the Oklahoma Tax Commission, and the Oklahoma Co., versus O'Neil.

The trial recessed for the weekend and resumes at 9:30 a.m. Monday. Cross-examination of Corn will continue.

It is expected the trial will last through most of next week. The jury remained impounded over the weekend, under guard by deputy U. S. marshals as it has been since it was impaneled Tuesday afternoon.

[From THE DAILY OKLAHOMAN, June 5, 1965]

"JUSTICES SLAP AT TESTIMONY"

By Jim Young

An angry trio of state supreme court justices issued strong denials Friday to federal court testimony linking them with attorney O. A. Cargill in a court appeal.

Former Justice N. S. Corn testified at Cargill's federal perjury trial that the veteran city lawyer told him a man in Tulsa would take care of Justice Harry L. S. Halley, a man in Bristow would take care of Justice W. H. Blackbird and he (Cargill) "would take care of (Denver) Davison and the two Indians (N. B. Johnson and Earl Welch)."

'I Deny It'

Corn said the statements were made in connection with Marshall vs. Amos, involving oil property in Cleveland County.

Halley, now the chief justice, said, "I have never heard of Cargill in that case until long after it was decided."

"No one approached me or said anything to me about the case," he added.

"If Cargill made that statement he had no basis to go on," he said. "I deny it flat-footedly and undeniably."

Case Tie Unknown

Justice Blackbird said, "Mr. O. A. Cargill nor any other person approached me or dared to approach me."

"Whether O. A. Cargill would make this statement I don't know," Justice Blackbird said. "I don't think any member of the court had knowledge of O. A. Cargill being in this case in the slightest."

He added that too many lawyers are prone to claim influence with judges "when they don't have influence in the slightest."

JUSTICE SHOCKED

"I, along with Justice Halley, flatly deny O. A. Cargill made an offer to me in this case or any other case.

"It is a shame this court should have to put up with such tomfoolery," he said. "We have had our names dragged through the news media to a point it is now sickening."

Davison said, "I was shocked when I heard the statement. I was rather dumbfounded."

"Nobody talked to me about the case," Justice Davison said.

END